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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1453

Introduced by Assembly Member Koretz

(Principal coauthor: ~~Assembly Member Vargas~~ *Senator Dunn*)

~~(Coauthors: Assembly Members Chan and Jackson)~~

~~(Coauthors: Senators Kuehl and Romero)~~

February 23, 2001

An act to *amend Sections 17537.3, 22952, 22956, and 22958 of, and to add Sections 22963–22963.5, 22964, and, 22965, and 22966 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco products.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1453, as amended, Koretz. Tobacco: *minimum legal age: display an use distribution* limitations.

Existing law *prohibits the furnishing of tobacco products to, and the purchase of those products by, a person under the age of 18 years and makes the violation of these provisions a criminal offense. Existing law also provides for the establishment of programs relating to the prevention of tobacco use* ~~prevention~~.

This bill would *change this minimum age requirement to apply to a person under the age of 21 years with an exception provided for a person born before January 1, 1985. The bill would require that tobacco use prevention programs be revised to discourage the use of tobacco products by any person under that age. The bill would prohibit, with specified exceptions, any person, firm, or corporation from displaying or making available any ashtrays or other receptacles designed for tobacco-related waste for use on the premises where smoking is prohibited* ~~with specified exceptions~~, and would impose either a civil penalty or subject the person, firm, or corporation to a citation for an infraction with escalating fines for subsequent violations. By creating new infractions *and enlarging the scope of an existing crime by changing the minimum age requirement for furnishing and purchasing tobacco products*, the bill would impose additional duties on local law enforcement agencies, thus ~~creating~~ imposing a state-mandated local program.

This bill would also prohibit the distribution of free samples of tobacco products by mail to anyone who has not been previously identified as a consumer of tobacco products who is ~~18~~ 21 years of age or older *or was born before January 1, 1985* and would authorize the imposition of a civil penalty for each violation of this provision.

This bill would require any person, firm, or corporation that maintains an area where smoking is permitted under state law to provide one or more receptacles for tobacco-related waste for use on the premises.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares the*
2 *following:*

3 (a) *Tobacco kills 480,000 Americans every year, causing more*
4 *deaths than AIDS, alcohol abuse, illegal drug use, auto accidents,*
5 *firearms accidents, fires, homicides, and suicides combined.*

6 (b) *Youth smoking has been identified as one of the most*
7 *important health care problems, and beginning to smoke as an*
8 *adolescent is the most important cause of a lifetime smoking*
9 *addiction.*

10 (c) *Three states, Alabama, Alaska, and Utah, have raised the*
11 *minimum legal age for smoking above that required by California.*

12 (d) *Increasing the legal minimum sale age for tobacco will*
13 *reduce the number of older youth who smoke and will help reduce*
14 *sales of tobacco to younger children.*

15 (e) *Studies and surveys have shown that when states increase*
16 *the legal minimum sale age for alcohol, drinking by high school*
17 *seniors fell by over a third and daily drinking in the same group fell*
18 *more than 50 percent.*

19 (f) *According to a United States Surgeon General's report,*
20 *smokers usually have sampled cigarettes at the median age of 14*
21 *years but did not begin to smoke daily until the age of 18 years, and*
22 *a small percentage began smoking after the age of 21 years.*

23 (g) *According to the American Lung Association,*
24 *approximately 90 percent of smokers begin smoking before the age*
25 *of 21 years, and those who begin smoking at an early age are more*
26 *likely to develop a severe level of addiction to nicotine than those*
27 *who start at a later age.*

28 (h) *The legal minimum sale age for alcohol in California is 21*
29 *years of age and those under 21 have a visibly different driver's*
30 *license. Raising the legal minimum sale age for tobacco would*
31 *ease the ability of merchants and vendors to check identification*
32 *and would establish a uniform age for the purchase of these legal*
33 *drugs.*

34 (i) *The state should continue its commitment to vigorous*
35 *antitobacco education efforts and strict enforcement of existing*
36 *laws limiting access by youth to these products.*

1 (j) *It is in the interest of the public health to prevent adolescents*
2 *from taking up the deadly habit of smoking in order to avert their*
3 *addiction to nicotine later in life.*

4 SEC. 2. *Section 17537.3 of the Business and Professions Code*
5 *is amended to read:*

6 17537.3. The following acts are prohibited:

7 (a) For any person to offer as part of an advertising plan or
8 program, promotional offers of smokeless tobacco products
9 ~~which~~ *that* require proof of purchase of a smokeless tobacco
10 product unless it carries a designation that the offer is not available
11 to ~~minors~~ *a person under the age of 21 years*. Each promotional
12 offer shall include in any mail-in coupon a statement requesting
13 purchasers to verify that the purchaser is ~~18~~ 21 years of age or
14 older.

15 (b) For any person to honor mail-in and telephone requests for
16 promotional offers of smokeless tobacco products unless
17 appropriate efforts are made to ascertain that a purchaser is over
18 ~~18~~ 21 years of age. For purposes of this subdivision, appropriate
19 efforts to ascertain the age of a purchaser includes, but is not
20 limited to, requests for a purchaser's birth date.

21 (c) For any person by any means, as part of an advertising plan
22 or program, to distribute free samples of smokeless tobacco
23 products within a two block radius of any premises or facilities
24 whose primary purpose is directed toward persons under the age
25 of ~~18~~ 21 years including, but not limited to, schools, clubhouses,
26 and youth centers, when those premises are being used for their
27 primary purposes.

28 (d) For any person to distribute, as part of any advertising plan
29 or program, unsolicited samples of smokeless tobacco products
30 through a mail campaign.

31 (e) *The provisions of this section shall not prohibit promotional*
32 *offers of smokeless tobacco products, the honoring of those*
33 *promotional offers, or the distribution of samples, to any person*
34 *who was born before January 1, 1985.*

35 SEC. 3. *Section 22952 of the Business and Professions Code*
36 *is amended to read:*

37 22952. ~~On or before July 1, 1995, the~~ The State Department
38 of Health Services shall do all of the following:

1 (a) Establish and develop a program to reduce the availability
2 of tobacco products to persons under ~~18~~ 21 years of age through
3 the enforcement activities authorized by this division.

4 (b) Establish requirements that retailers of tobacco products
5 post conspicuously, at each point of purchase, a notice stating that
6 selling tobacco products to anyone under ~~18~~ 21 years of age is
7 illegal and subject to penalties *unless otherwise specified by law*.
8 The notice shall also state that the law requires that all persons
9 selling tobacco products check the identification of any purchaser
10 of tobacco products who reasonably appears to be under ~~18~~ 21
11 years of age. The warning signs shall include a toll-free telephone
12 number to the state department for persons to report unlawful sales
13 of tobacco products to ~~minors~~ *a person under 21 years of age who*
14 *was not born before January 1, 1985*.

15 (c) Provide that *the* primary responsibility for enforcement of
16 this division shall be with the state department. In carrying out its
17 enforcement responsibilities, the state department shall conduct
18 random, onsite sting inspections at retail sites and shall enlist the
19 assistance of persons that are ~~15~~ 18 and ~~16~~ 19 years of age in
20 conducting these enforcement activities. The state department
21 may conduct onsite sting inspections in response to public
22 complaints or at retail sites where violations have previously
23 occurred, and investigate illegal sales of tobacco products to
24 ~~minors~~ *a person under 21 years of age* by telephone, mail, or the
25 Internet. Participation in these enforcement activities by a person
26 under ~~18~~ 21 years of age shall not constitute a violation of
27 subdivision (b) of Section 308 of the Penal Code for the person
28 under ~~18~~ 21 years of age, and the person under ~~18~~ 21 years of age
29 is immune from prosecution thereunder, or under any other
30 provision of law prohibiting the purchase of these products by a
31 person under ~~18~~ 21 years of age.

32 (d) In accordance with Chapter 3.5 (commencing with Section
33 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
34 the state department shall adopt and publish guidelines for the use
35 of persons under ~~18~~ 21 years of age in inspections conducted
36 pursuant to subdivision (c) that shall include, but not be limited to,
37 all of the following:

38 (1) The state department and any local law enforcement agency
39 under an enforcement delegation contract with the department
40 may use persons under ~~18~~ 21 years of age who are ~~15~~ 18 or ~~16~~ 19

1 years of age in random inspections to determine if sales of
2 cigarettes or other tobacco products are being made to persons
3 under ~~18~~ 21 years of age.

4 (2) A photograph or video recording of the person under ~~18~~ 21
5 years of age shall be taken prior to each inspection or shift of
6 inspections and retained by the department or the local law
7 enforcement agency under an enforcement delegation contract
8 with the department for purposes of verifying appearances.

9 (3) The state department or a local law enforcement agency
10 under an enforcement delegation contract with the department
11 may use video recording equipment when conducting the
12 inspections to record and document illegal sales or attempted sales.

13 (4) The person under ~~18~~ 21 years of age, if questioned about his
14 or her age, need not state his or her actual age but shall present a
15 true and correct identification if verbally asked to present it. Any
16 failure on the part of the person under ~~18~~ 21 years of age to provide
17 true and correct identification, if verbally asked for it, shall be a
18 defense to any action pursuant to this section.

19 (5) The person under ~~18~~ 21 years of age shall be under the
20 supervision of a regularly employed peace officer during the
21 inspection.

22 (6) All persons under ~~18~~ 21 years of age used in this manner by
23 the department or a local law enforcement agency under an
24 enforcement delegation contract with the department shall display
25 the appearance of a person under ~~18~~ 21 years of age. It shall be a
26 defense to any action under this division that the person's
27 appearance was not that which could be generally expected of a
28 person under ~~18~~ 21 years of age, under the actual circumstances
29 presented to the seller of the cigarettes or other tobacco products
30 at the time of the alleged offense.

31 (7) Following the completion of the sale, the peace officer
32 accompanying the person under ~~18~~ 21 years of age shall reenter
33 the retail establishment and inform the seller of the random
34 inspection and following an attempted sale, the department shall
35 notify the retail establishment of the inspection.

36 (8) Failure to comply with the procedures set forth in this
37 subdivision shall be a defense to any action brought pursuant to
38 this section.

39 (e) Be responsible for ensuring and reporting the state's
40 compliance with Section 1926 of Title XIX of the federal Public

1 Health Service Act (42 U.S.C. 300x-26) and any implementing
2 regulations adopted in relation thereto by the United States
3 Department of Health and Human Services. A copy of this report
4 shall be made available to the Governor and the Legislature.

5 (f) Provide that any civil penalties imposed pursuant to Section
6 22958 shall be enforced against the owner or owners of the retail
7 business and not the employees of the business.

8 *SEC. 4. Section 22956 of the Business and Professions Code*
9 *is amended to read:*

10 22956. All persons engaging in the retail sale of tobacco
11 products shall check the identification of tobacco purchasers, to
12 establish the age of the purchaser, if the purchaser reasonably
13 appears to be under ~~18~~ 21 years of age.

14
15 *SEC. 5. Section 22958 of the Business and Professions Code*
16 *is amended to read:*

17 22958. (a) The state department may assess civil penalties
18 against any person, firm, or corporation that sells, gives, or in any
19 way furnishes to another person who is under the age of ~~18~~ 21
20 years *other than for a person born before January 1, 1985*, any
21 tobacco, cigarette, or cigarette papers, or any other instrument or
22 paraphernalia that is designed for the smoking or ingestion of
23 tobacco, products prepared from tobacco, or any controlled
24 substance, according to the following schedule: (1) a civil penalty
25 of from two hundred dollars (\$200) to three hundred dollars (\$300)
26 for the first violation, (2) a civil penalty of from six hundred dollars
27 (\$600) to nine hundred dollars (\$900) for the second violation
28 within a five-year period, (3) a civil penalty of from one thousand
29 two hundred dollars (\$1,200) to one thousand eight hundred
30 dollars (\$1,800) for a third violation within a five-year period, (4)
31 a civil penalty of from three thousand dollars (\$3,000) to four
32 thousand dollars (\$4,000) for a fourth violation within a five-year
33 period, or (5) a civil penalty of from five thousand dollars (\$5,000)
34 to six thousand dollars (\$6,000) for a fifth or subsequent violation
35 within a five-year period.

36 (b) The state department shall assess penalties in accordance
37 with the schedule set forth in subdivision (a) against any person,
38 firm, or corporation that sells, offers for sale, or distributes tobacco
39 products from a cigarette or tobacco products vending machine, or

1 any person, firm, or corporation that leases, furnishes, or services
2 these machines in violation of Section 22960.

3 (c) The state department shall assess penalties in accordance
4 with the schedule set forth in subdivision (a) against any person,
5 firm, or corporation that advertises or causes to be advertised any
6 tobacco product on any outdoor billboard in violation of Section
7 22961.

8 (d) If a civil penalty has been assessed pursuant to this section
9 against any person, firm, or corporation for a single, specific
10 violation of this division, the person, firm, or corporation shall not
11 be prosecuted under Section 308 of the Penal Code for a violation
12 based on the same facts or specific incident for which the civil
13 penalty was assessed. If any person, firm, or corporation has been
14 prosecuted for a single, specific violation of Section 308 of the
15 Penal Code, the person, firm, or corporation shall not be assessed
16 a civil penalty under this section based on the same facts or specific
17 incident upon which the prosecution under Section 308 of the
18 Penal Code was based.

19 (e) (1) In the case of a corporation or business with more than
20 one retail location, to determine the number of accumulated
21 violations for purposes of the penalty schedule set forth in
22 subdivision (a), violations of this division by one retail location
23 shall not be accumulated against other retail locations of that same
24 corporation or business.

25 (2) In the case of a retail location that operates pursuant to a
26 franchise as defined in Section 20001, violations of this division
27 accumulated and assessed against a prior owner of a single
28 franchise location shall not be accumulated against a new owner
29 of the same single franchise location for purposes of the penalty
30 schedule set forth in subdivision (a).

31 (f) Proceedings under this section shall be conducted in
32 accordance with Section 100171 of the Health and Safety Code.

33 SEC. 6. Section ~~22963~~ 22963.5 is added to the Business and
34 Professions Code, to read:

35 ~~22963.~~—

36 22963.5. (a) Except as provided in subdivisions (b) and ~~(c)~~
37 ~~(d)~~, no person, firm, or corporation shall display or make available
38 ashtrays or other receptacles designed for tobacco-related waste
39 for use on the premises where smoking is prohibited under existing
40 state law.

(b) Notwithstanding subdivision (a), a receptacle for tobacco-related waste may be placed within five feet of a door available for public entry onto the premises.

(c) Any person, firm, or corporation that maintains an area where smoking is permitted under state law, such as an outdoor dining area, shall provide one or more receptacles for tobacco-related waste for use on the premises.

(d) Notwithstanding subdivision (a), ashtrays may be sold or distributed to the public on premises where smoking is prohibited but only for use in areas where smoking is not prohibited.

(e) Any person, firm, or corporation who is in violation of subdivision (a) shall be subject to either of the following:

(1) A civil penalty assessed by the State Department of Health Services for each violation according to the following schedule:

(A) A civil penalty of two hundred fifty dollars (\$250) for the first violation.

(B) A civil penalty of five hundred dollars (\$500) for the second violation at the same location within a five-year period.

(C) A civil penalty of one thousand dollars (\$1,000) for the third or subsequent violation at the same location within a five-year period.

(2) A citation by local police, sheriff, or code enforcement personnel for committing a public offense punishable as an infraction by a fine subject to the following schedule:

(A) For a first offense, punishable by a fine of two hundred fifty dollars (\$250).

(B) For a second offense at the same location within a five-year period, punishable by a fine of five hundred dollars (\$500).

(C) For a third or subsequent offense at the same location within a five-year period, punishable by a fine of one thousand dollars (\$1,000).

~~SEC. 2.~~

SEC. 7. Section 22964 is added to the Business and Professions Code, to read:

22964. (a) No person, firm, or corporation shall provide free samples of any tobacco product by mail to anyone who has not been previously identified as a consumer of tobacco products who is ~~18-21~~ years of age or older.

(b) Each mailing of a tobacco product to any person who has not been previously identified as a consumer of tobacco products

1 who is ~~18-21~~ years of age or older shall constitute a separate
2 violation of subdivision (a) and shall be subject to the civil penalty
3 as provided in subdivision ~~(e)~~ (d).

4 (c) *Subdivisions (a) and (b) shall not prohibit the provision of*
5 *tobacco products to a person who was born before January 1,*
6 *1985, who has been previously identified as a consumer of tobacco*
7 *products.*

8 (d) In addition to any penalty that may be imposed for a
9 violation under Section 308b of the Penal Code, a person, firm, or
10 corporation shall be subject to a civil penalty assessed by the State
11 Department of Health Services of two hundred fifty dollars (\$250)
12 for each separate violation of subdivision (a).

13 ~~SEC. 3.—~~

14 SEC. 8. Section 22965 is added to the Business and
15 Professions Code, to read:

16 22965. (a) Sections ~~22963-22963.5~~ and 22964 shall not
17 preempt or otherwise prohibit the adoption of a local standard that
18 imposes greater restrictions on the promotion of, use of, or access
19 to tobacco products than the restrictions imposed by this division.

20 (b) To the extent that there is an inconsistency between
21 Sections ~~22963~~ 22963.5 and 22964 and a local standard that
22 imposes greater restrictions on the promotion of, use of, or access
23 to, tobacco products, the greater restriction on the promotion of,
24 use of, or access to, tobacco products in the local standard shall
25 prevail.

26 ~~SEC. 4.—~~

27 SEC. 9. Section 22966 is added to the Business and
28 Professions Code, to read:

29 22966. *The provisions of this division shall not prohibit a city*
30 *or county from enacting laws with respect to the legal age to*
31 *purchase or possess tobacco products as long as they are at least*
32 *as stringent as state law.*

33 SEC. 10. Section 308 of the Penal Code is amended to read:

34 308. (a) Every person, firm, or corporation ~~which~~ that
35 knowingly or under circumstances in which it has knowledge, or
36 should otherwise have grounds for knowledge, sells, gives, or in
37 any way furnishes to another person who is under the age of ~~18~~ 21
38 years *other than a person born before January 1, 1985*, any
39 tobacco, cigarette, or cigarette papers, or any other preparation of
40 tobacco, or any other instrument or paraphernalia that is designed

for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces *indicating the person is age 21 years or older or was born before January 1, 1985.*

For purposes of this section, the person liable for selling or furnishing tobacco products to ~~minors~~ *a person under the age of 21 years or a person born on or after January 1, 1985* by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by ~~minors~~ *a person under the age of 21 years or a person born on or after January 1, 1985.*

(b) Every person under the age of ~~18~~ *21 years other than a person born before January 1, 1985*, who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia

1 that is designed for the smoking of tobacco, products prepared
2 from tobacco, or any controlled substance shall, upon conviction,
3 be punished by a fine of seventy-five dollars (\$75) or 30 hours of
4 community service work.

5 (c) Every person, firm, or corporation ~~which~~ *that* sells, or deals
6 in tobacco or any preparation thereof, shall post conspicuously and
7 keep so posted in his, her, or their place of business at each point
8 of purchase the notice required pursuant to subdivision (b) of
9 Section 22952 of the Business and Professions Code, and any
10 person failing to do so shall upon conviction be punished by a fine
11 of ten dollars (\$10) for the first offense and fifty dollars (\$50) for
12 each succeeding violation of this provision, or by imprisonment
13 for not more than 30 days.

14 (d) For purposes of determining the liability of persons, firms,
15 or corporations controlling franchises or business operations in
16 multiple locations for the second and subsequent violations of this
17 section, each individual franchise or business location shall be
18 deemed a separate entity.

19 (e) It is the Legislature's intent to regulate the subject matter of
20 this section. As a result, no city, county, or city and county shall
21 adopt any ordinance or regulation inconsistent with this section.

22 (f) Notwithstanding any other provision of this section, the
23 Director of Corrections may sell or supply tobacco and tobacco
24 products, including cigarettes and cigarette papers, to any person
25 confined in any institution or facility under his or her jurisdiction
26 who has attained the age of 16 years, if the parent or guardian of
27 the person consents thereto, and may permit smoking by the person
28 in any institution or facility. No officer or employee of the
29 Department of Corrections shall be considered to have violated
30 this section by any act authorized by this subdivision.

31 *SEC. 11.* No reimbursement is required by this act pursuant
32 to Section 6 of Article XIII B of the California Constitution
33 because the only costs that may be incurred by a local agency or
34 school district will be incurred because this act creates a new crime
35 or infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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